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## INCOME TAXES

## CH. 1 INCOME FROM OUTSIDE U. S.

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question of fact. *Foster v. U. S.*, D.C.N.Y. 1963, 221 F.Supp. 291, affirmed 329 F.2d 717.

United States Air Force Europe Child Guidance Center in Germany was United States agency for purposes of subsec. (a)(2) of this section under case law and on record showing Center was established and operated under pervasive Air Force financial and supervisory control, solely to effectuate Air Force purposes, on nonprofit basis, limited to Air Force-connected, so that amounts paid to taxpayers in 1969 as employees of Center were not excludable from taxable income; nor were amounts excludable under taxpayers' alternative contentions (1) that Center was mere conduit for funds paid by other sources since Center was in fact true payor, or (2) that Center was not United States agency because it was neither appropriated nor unappropriated fund activity, since even if Center were not an unappropriated fund activity, which Tax Court determined it was, whether it was United States agency was still question of fact. *Kalmski v. C. I. R.*, 1975, 64 T.C. 119.

## 30. Questions of law

For purposes of this section permitting a bona fide resident of a foreign country for an entire taxable year to exclude from income amounts earned from sources outside the United States during period of absence, whether taxpayer successfully maintained status as foreign resident during period of absence from foreign country was a legal, not a factual one, where underlying facts were not in dispute. *Carpenter v. U. S.*, C.A.Ten. 1974, 495 F.2d 175.

## 31. Findings of district court

In action for recovery of taxes, district court's finding that taxpayer had been domiciled in Japan during years 1953 to 1963 rather than in California, thus precluding exclusion of one-half of income earned by taxpayer during those years from taxable income on basis that that income was community property income, was not clearly erroneous. *U. S.*, C.A.Cal. 1973, 484 F.2d 95.

## 2. Findings of Tax Court

Tax Court's fact findings in a case concerning whether taxpayers were such bona fide residents of foreign countries that their earned incomes from sources without United States were tax exempt were not clearly erroneous. *C. I. R. v. Matthew*, C.A.F.D. 1935 F.2d 231, certiorari denied 85 S.Ct. 880 U.S. 943, 13 L.Ed.2d 962.

## 93. Scope of review

In determining whether salary paid to American citizen was exempt from income tax because salary was a payment for services rendered without the United States, court of appeals could not make a finding as to where compensation was received even if it was apparent from general findings that salary was received in the United States from an American firm resident in New York. *C. I. R. v. Fiske's Estate*, C.C.A. 1942, 128 F.2d 487, certiorari denied 63 S.Ct. 63, 317 U.S. 635, 87 L.Ed. 512.

## 94. Issues reviewable

Conclusion of Tax Court as to whether party was bona fide resident of foreign country for taxable year within this section exempting from gross income amounts received by such residents from sources without United States is conclusion of law or at least mixed question of law and fact, and is subject to judicial review by court of appeals which may substitute its judgment for that of Tax Court. *Sochurek v. C. I. R.*, C.A.7, 1962, 300 F.2d 34.

Question whether taxpayers were bona fide nonresidents of the United States for more than six months during the taxable year, so that their income from sources outside the

United States should be exempt from taxation under this section was a question of law and the court of appeals was not required to follow the decision of the Tax Court. *C. I. R. v. Swent*, C.C.A.4, 1946, 155 F.2d 513, certiorari denied 67 S.Ct. 491, 329 U.S. 811, 91 L.Ed. 685.

The conclusion of Board of Tax Appeals [now Tax Court] under undisputed facts that taxpayer was a bona fide nonresident of the United States and that amount paid him as compensation was exempt from income tax was not a "finding of fact", and hence was reviewable, since when ultimate finding is a conclusion of law or at least a determination of a mixed question of law and fact, such finding is subject to judicial review. *C. I. R. v. Fiske's Estate*, C.C.A. 1942, 128 F.2d 487, certiorari denied 63 S.Ct. 63, 317 U.S. 635, 87 L.Ed. 512.

## 95. Reversal

Where court of appeals thought Tax Court's decision contrary to that of the Commissioner, lacked warrant in the record and was without reasonable basis in the law, court of appeals was compelled to reverse the decision. *C. I. R. v. Swent*, C.C.A.4, 1946, 155 F.2d 513, certiorari denied 67 S.Ct. 491, 329 U.S. 801, 91 L.Ed. 685.

## § 912. Exemption for certain allowances

The following items shall not be included in gross income, and shall be exempt from taxation under this subtitle:

(1) Foreign areas allowances.—In the case of civilian officers and employees of the Government of the United States, amounts received as allowances or otherwise (but not amounts received as post differentials) under—

(A) chapter 9 of title I of the Foreign Service Act of 1980.

(B) section 4 of the Central Intelligence Agency Act of 1949 as amended (50 U.S.C., sec. 403e),

(C) title II of the Overseas Differentials and Allowances Act of

(D) subsection (e) or (f) of the first section of the Administrative Expenses Act of 1946, as amended, or section 22 of such Act.

(2) Cost-of-living allowances.—In the case of civilian officers or employees of the Government of the United States stationed outside the continental United States (other than Alaska) amounts (other than allowances Act) received as cost-of-living allowances in accordance with regulations approved by the President.

(3) Peace Corps allowances.—In the case of an individual who is a volunteer or volunteer leader within the meaning of the Peace Corps

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Act and members of his family, amounts received as allowances under section 5 or 6 of the Peace Corps Act other than amounts received as—

(A) termination payments under section 5(c) or section 6(1) of such Act,

(B) leave allowances,

(C) if such individual is a volunteer leader training in the United States, allowances to members of his family, and

(D) such portion of living allowances as the President may determine under the Peace Corps Act as constituting basic compensation.

(Aug. 16, 1954, c. 736, 68A Stat. 290; Sept. 6, 1960, Pub.L. 86-707, Title V, § 523(a), 74 Stat. 802; Sept. 22, 1961, Pub.L. 87-293, Title II, § 201(e), 75 Stat. 625; Oct. 17, 1980, Pub.L. 96-465, Title II, § 2206(e)(3), 94 Stat. 2163.

## Historical Note

1939 Internal Revenue Code. Similar provisions to this section were contained in section 116(j), (k) of the 1939 Internal Revenue Code.

Derivation and Similar Provisions. See Historical Note under section 115 of this title.

References in Text. The Foreign Service Act of 1980, referred to in par. (1)(A), is Pub. L. 96-465, Oct. 17, 1980, 94 Stat. 2071. Chapter 9 of title I of the Foreign Service Act of 1980 is classified generally to subchapter IX (section 4081 et seq.) of chapter 52 of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 3901 of Title 22 and Tables volume.

Section 4 of the Central Intelligence Agency Act of 1949, as amended (50 U.S.C., sec. 403e), referred to in par. (1)(B), is classified to section 403e of Title 50, War and National Defense.

Title II of the Overseas Differentials and Allowances Act, referred to in pars. (1)(C) and (2), was title II of Pub.L. 86-707, Sept. 6, 1960, 74 Stat. 792, which was repealed and reenacted as sections 5922 to 5925 of Title 5, Government Organization and Employees, by Pub.L. 89-554, Sept. 6, 1966, 80 Stat. 378.

Sections 1(e) and (f) and 22 of the Administrative Expenses Act of 1946, referred to in par. (1)(D), were repealed and the provisions thereof reenacted as sections 5726(a), 5727(b) to (e), and 5913 of Title 5, Government Organization and Employees, by Pub.L. 89-554, Sept. 6, 1966, 80 Stat. 378.

The Peace Corps Act, referred to in par. (3), is Pub.L. 87-293, Sept. 22, 1961, 75 Stat. 612, which is classified principally to chapter 34 (section 2501 et seq.) of Title 22, Foreign

Relations and Intercourse. Sections 5 and 6 of that Act are classified to sections 2504 and 2505 of Title 22. For complete classification of this Act to the Code, see Short Title note set out under section 2501 of Title 22 and Tables volume.

1980 Amendment. Par. (1)(A). Pub.L. 96-465 substituted reference to chapter 9 of title I of the Foreign Service Act of 1980 for reference to title IX of the Foreign Service Act of 1946.

1961 Amendment. Par. (3). Pub.L. 87-293 added par. (3).

1960 Amendment. Pub.L. 86-707 exempted foreign areas allowances received under section 4 of the Central Intelligence Agency Act of 1949, title II of the Overseas Differentials and Allowances Act, subsection (e) or (f) of the first section of the Administrative Expenses Act of 1946, or section 22 of such Act, provided that amounts received as post differentials shall not be exempt and in the provisions relating to cost-of-living allowances excluded Alaska from the term "continental United States" and amounts received under title II of the Overseas Differentials and Allowances Act.

Effective Date of 1980 Amendment. Amendment by Pub.L. 96-465 effective Feb. 15, 1981, except as otherwise provided, see section 2403 of Pub.L. 96-465, set out as an Effective Date note under section 3901 of Title 22, Foreign Relations and Intercourse.

Effective Date of 1961 Amendment. Section 201(d) of Pub.L. 87-293 provided that: "The amendments made by subsections (a) and (b) of this section [to this section and section 1303 of this title] shall apply with respect to taxable years ending after March 1, 1961. The amendment made by subsection (c) [to

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of his family, amounts received as allowances under the Peace Corps Act other than amounts received as—  
tion payments under section 5(c) or section 6(1) of

allowances.

Individual is a volunteer leader training in the United States to members of his family, and

provision of living allowances as the President may designate under the Peace Corps Act as constituting basic compen-

A Stat. 29: Sept. 6, 1960, Pub.L. 86-707, Title V, § 523 2, 1961. Pub.L. 87-293, Title II, § 201(a), 75 Stat. 625; 465, Title II, § 2206(e)(3), 94 Stat. 2163.)

Historical Note

e. Similar provisions contained in section 15 of this title.

Foreign Service Act of 1946, section 5(a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), (m), (n), (o), (p), (q), (r), (s), (t), (u), (v), (w), (x), (y), (z).

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Intelligence Agency Act of 1949, title II of the Overseas Differentials and Allowances Act, subsection (e) or (f) of the first section of the Administrative Expenses Act of 1946, or section 22 of such Act, provided that amounts received as post differentials shall not be exempt, and in the provisions relating to cost-of-living allowances included Alaska from the term "continental United States" and amounts received under title II of the Overseas Differentials and Allowances Act.

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Relations and Intercourse. Sections 5 and 6 of that Act are classified to sections 2504 and 2505 of Title 22. For complete classification of this Act to the Code, see Short Title note set out under section 2501 of Title 22 and Tables volume.

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Section 3401 of this title] shall apply with respect to remuneration paid after the date of the enactment of this Act [Sept. 22, 1961].

Section 201(d) of Pub.L. 87-293 repealed by Pub.L. 89-572, § 5(a), Sept. 13, 1966, 80 Stat. 765. Such repeal not deemed to affect amendments contained in such provisions see section 5(b) of Pub.L. 89-572, set out as a note under former section 2515 of Title 22, Foreign Relations and Intercourse.

Effective Date of 1960 Amendment. Section 523(b) of Pub.L. 86-707 provided that "Paragraphs (1) and (2) of section 912 of the Internal Revenue Code of 1954, as amended by subsection (a) of this section [pars. (1) and (2) of this section], shall apply only with respect to amounts received on or after the date of the enactment of this Act [Sept. 6, 1960], taxable years ending on or after such date."

Repeals; Amendments and Application of Amendments Unaffected. Section 201(e) of Pub.L. 87-293 was repealed by Pub.L. 89-572, § 5(a), Sept. 13, 1966, 80 Stat. 765. Such repeal not deemed to affect amendments to this section contained in such provisions, and continuation in full force and effect until modified by appropriate authority of all determinations, authorization, regulations, orders, contracts, agreements, and other actions issued undertaken, or entered into under authority of the repealed provisions, see section 5(b) of Pub.L. 89-572, set out as a note under former section 2515 of Title 22, Foreign Relations and Intercourse.

Delegation of Functions. Function of determining the portion of living allowances constituting basic compensation for Peace Corps volunteers or volunteer leaders under par. (3) delegated by President to Director of Peace Corps to be performed in consultation with the Secretary of the Treasury, see section 1-104 of Ex.Ord.No. 12137, May 16, 1979, 44 F.R. 29023, see our under section 2501 of Title 22, Foreign Relations and Intercourse.

Delegation of Authority. Authority of the President under par. (3) delegated to the Secretary of Defense with respect to the military departments, and the secretary of the Treasury with respect to the Coast Guard, concerning civilian employees of nonappropriated fund instrumentalities of the armed forces, see section 201 of Ex.Ord.No.11137, Jan. 7, 1964, set out under section 5221 of Title 5, Government Organization and Employees.

Legislative History. For a comprehensive analysis of this section as contained in House Report No. 1337, Senate Report No. 1622, and Conference Report No. 2543, which accompanied the Internal Revenue Code of 1954, see pp. 439-5063, of the 1954 U.S. Code Cong. and Adm. News. See, also, Pub. L. 86-707, 1960 U.S. Code Cong. and Adm. News, p. 3338; Pub.L. 87-293, 1961 U.S. Code Cong. and Adm. News, p. 2842; Pub.L. 96-465, 1980 U.S. Code Cong. and Adm. News, p. 4419.

Cross References

Amounts paid employees of American Institute of Taiwan not treated as earned income under this section, see section 3310 of Title 22, Foreign Relations and Intercourse.  
Authority of Secretary to require information on returns concerning allowances under this section, see section 6011 of this title

Library References

Internal Revenue § 3055, 4108 et seq.  
C.J.S. Internal Revenue §§ 432, 433, 434 et seq.

Notes of Decisions

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allowances. C. I. R. v. Mooneyhan, C.A. Tex.1968, 404 F.2d 522, certiorari denied 89 S.Ct. 1593, 394 U.S. 1001, 22 L.Ed.2d 778.

1. Foreign area allowances

2. Cost-of-living allowances

Taxpayer who had accepted an indefinite appointment as equipment specialist in the Bureau of Public Roads, which was a United States agency charged with administration of Iranian road construction program, was not entitled to partial exclusion under this section dealing with foreign area

In action by taxpayer to recover income taxes alleged to have been erroneously and illegally assessed and collected, evidence failed to establish that taxpayer's basic compensation as a civilian employee of the Hawaii Air National Guard was fixed by statute, or that he received cost-of-living allowances in accor-

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dance with regulations approved by the President, but, evidence established that his compensation was fixed by lawful regulation, and that he did not receive a cost-of-living allowance during the period in controversy, and therefore taxpayer did not overpay his income tax on theory that a portion of the salary received by him represented a cost-of-living allowance excludable from taxable income under this section dealing with exclusion of amounts received by employees of the government stationed outside the United States received as cost-of-living allowance in accordance with regulations approved by the President. *Barnett v. U. S., D.C.Hawaii* 1959, 174 F.Supp. 907, affirmed 289 F.2d 939.

This section and Ex.Ord. No. 10000, set out under section 5941 of Title 22, providing for exclusion of cost-of-living allowances for certain government employees outside continental United States or an Alaska whose basic compensation was fixed by statute, was meant to encompass persons such as taxpayer even though Attorney General had discretion to fix specific amount of his basic salary as United States attorney within certain defined

statutory limitations. *Manson v. C. I. R.* 1961, 36 T.C. 953.

Petitioner, employee of government American Samoa, was not entitled to cost-of-living allowance received in 1952 or 1953, under this section, since in order to excludible such allowances must have been paid in accordance with regulations approved by President, and during those years, there were no such regulations authorizing payment of such allowances to employees of government of American Samoa. *Bell v. C. I. R.*, 1959, 32 T.C. 839, affirmed 278 F.2d 111.

Cost-of-living allowance of United States citizen employed by Territorial Government of American Samoa was not exempt under this section since citizen failed to show that such allowance was pursuant to regulations approved by President. *Davis v. C. I. R.* 1958, 30 T.C. 462.

Increase in the basic salary of a district court clerk in Alaska to offset increased living costs is not exempt from tax under this section. *Brunelle v. C. I. R.* 1950, 15 T.C. 74, affirmed 192 F.2d 422.

**[§ 913. Repealed. Pub.L. 97-34, Title I, § 112(a), Aug. 13, 1981, 95 Stat. 194]**

**Historical Note**

Section, added Pub.L. 95-615, § 203(a), Nov. 8, 1978, 92 Stat. 3100, and amended Pub.L. 96-222, Title I, § 128(a)(1)(B), (F), Apr. 1, 1980, 94 Stat. 223, 225; Pub.L. 96-608, § 1(a), Dec. 28, 1980, 94 Stat. 3550, related to a deduction for certain expenses of living abroad.

Effective Date of Repeal. Repeal effective with respect to taxable years beginning after Dec. 31, 1981, see section 115 of Pub.L. 97-34, set out as an Effective Date of 1981 Amendment note under section 911 of this title.

**[Subpart C—Repealed]**

**[§§ 921, 922. Repealed. Pub.L. 94-455, Title X, § 1052(a), Oct. 4, 1976, 90 Stat. 1648]**

**Historical Note**

Section 921, Acts Aug. 16, 1954, c. 736, 68A Stat. 290; Oct. 4, 1976, Pub.L. 94-455, Title XIX, § 1901(a)(116), 90 Stat. 1784, defined Western Hemisphere trade corporation.

Section 922, Acts Aug. 16, 1954, c. 736, 68A Stat. 291; Dec. 10, 1976, Pub.L. 92-178, Title V, § 502(c), 85 Stat. 550; Oct. 4, 1976, Pub.L. 94-455, Title X, § 1052(a), (c)(1), 90 Stat. 1647, 1648; Nov. 8, 1978, Pub.L.

95-600, Title III, § 301(b)(15), 92 Stat. 3550, related to the special deduction for Western Hemisphere trade corporations.

Effective Date of Repeal. Repeal of sections effective with respect to taxable years beginning after Dec. 31, 1979, see section 1052(d) of Pub.L. 94-455, set out as an Effective Date of 1976 Amendment note under section 170 of this title.

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